

APPROVED MINUTES*
SUNNYVALE CITY COUNCIL
REDEVELOPMENT AGENCY MEETING
TUESDAY, NOVEMBER 18, 2008

(Directly following this meeting a Redevelopment Agency meeting was held.)

5 P.M. SPECIAL COUNCIL MEETING (Study Session) – Onizuka Air Force Station (AFS) Draft Redevelopment (Land Use) Plan and Draft Homeless Assistance Submission

6 P.M. SPECIAL COUNCIL MEETING (Study Session) - Zero Waste Policy

7 P.M. COUNCIL MEETING

SALUTE TO THE FLAG

Mayor Spitaleri led the salute to the flag.

ROLL CALL

PRESENT:

Mayor Anthony Spitaleri
Councilmember John Howe
Councilmember Otto Lee
Councilmember Ron Swegles
Councilmember Christopher Moylan
Councilmember David Whittum

ABSENT:

Vice Mayor Melinda Hamilton (excused)

STAFF PRESENT:

City Manager Amy Chan
Assistant City Manager Robert Walker
City Attorney David Kahn
Director of Community Development Hanson Hom
Director of Human Resources Erwin Young
Director of Public Works Marvin Rose
Planning Officer Trudi Ryan
Principal Planner Geri Caruso
Senior Planner Steve Lynch
Superintendent of Recreation Nancy Bolgard Steward
City Clerk Gail Borkowski

Councilmember Howe announced that Vice Mayor Hamilton is on vacation and requested that the mayor excuse Vice Mayor Hamilton's absence. Mayor Spitaleri agreed.

PUBLIC ANNOUNCEMENTS

Barbara Fukumoto announced the City of Sunnyvale is partnering with Acterra's Green @ Home Program in offering community volunteers the opportunity to receive training to perform free basic energy audits for Sunnyvale residents.

Nancy Tivol announced: Sunnyvale Community Services is collecting food and household items for the community Christmas store; Sunnyvale Community Services annual auction, sponsored by

the Sunnyvale Chamber of Commerce, will be held December 4, 2008; and Sunnyvale Community Services Annual Open House on December 7, 2008.

Councilmember Swegles verified with Tivol that Sunnyvale Community Services put together 1,900 bags of food, not including produce, for those in need this Thanksgiving. Councilmember Swegles asked about the number of families that will be served and Tivol responded that approximately 1,200 families will receive bags of food.

Councilmember Swegles inquired as to how many more families would be served this year and Tivol stated approximately 150 additional families will receive assistance this year.

Councilmember Lee announced the City of Sunnyvale is holding an open house for retiring City Manager Amy Chan on November 20, 2008, at the Sunnyvale Community Center.

CONSENT CALENDAR

Councilmember Howe pulled items 1.E., 1.F., and 1.J.

Councilmember Howe moved, and Councilmember Swegles seconded, to approve the Consent Calendar with the exception of Items 1.E., 1.F., and 1.J.

VOTE: 6-0 (Vice Mayor Hamilton absent)

1.A. Approval of Information/Action Items – Council Directions to Staff

Fiscal Items

- 1.B. RTC 08–339 List of Claims and Bills Approved for Payment by the City Manager – List No. 425, 426 and 427**

Staff Recommendation: Council reviews the attached lists of bills.

- 1.C. RTC 08–328 City of Sunnyvale Investment Report – 3rd Quarter**

Staff Recommendation: Council receives and files the investment report.

- 1.D. RTC 08–326 Transmittal of the FY 2006/07 Performance Results Audit of Program 646 – Arts and Recreation Programs and Operation of Recreation Facilities**

Staff Recommendation: Council receives the audit report and concurs with management's acceptance of recommendations.

- 1.E. RTC 08–343 Carryover of Unexpended City Funds from FY 2007/08 to FY 2008/09 for State of the City Event and Technology Allowance for City Council, Restoration of Funding for the FY 2008/09 State of the City Event and Approval of Budget Modification No. 17**

Councilmember Howe stated he pulled this item to inquire if any of his colleagues had not yet utilized their technology allowance this fiscal year. Councilmember Whittum responded that he did not use his technology allowance and does not plan to use it in the future.

Public comments opened at 7:11 p.m.

No speakers.

Public comments closed at 7:11 p.m.

MOTION: Councilmember Howe moved, and Councilmember Whittum seconded, to approve Alternatives No.1, and No.3:

Alternative No.1: Council approves carryover of \$50,620 in allocated but unexpended State of the City funds from FY 2007/08 to FY 2008/09, and

Alternative No. 3: Council restores \$28,000 in funding for the FY 2008/09 State of the City Event.

Councilmember Whittum stated he seconded the motion for the purpose of clarification.

Councilmember Howe explained Council has already received their technology items for this year; therefore, there is no need to carry over funds from FY 2007/08 to FY 2008/09 from the General Fund. Councilmember Whittum verified that Councilmember Howe's intent is to restore the unused funds of \$6,553 to the General Fund.

Councilmember Moylan inquired if this action would affect new Councilmembers who might be elected in 2009. Councilmember Howe explained that a new Councilmember would not be seated until January 2010, and their technology allowance would be part of the FY 2009/10 budget to be approved in July 2009.

Councilmember Moylan stated that some of the technology that Council uses has a small monthly charge such as cell phone charges. City Manager Chan verified that the allocation for technology covers both the one time expense and any ongoing expenses for that item.

Councilmember Howe modified his motion to allow a carryover of \$1,200 for ongoing technology expenses for Councilmembers.

Councilmember Moylan stated he does not see the benefit of this action and will not support the motion. Councilmember Moylan noted that Vice Mayor Hamilton is a substantial user of technology and she is not present to vote on this item.

Councilmember Howe stated he would modify his motion to increase the allowance to \$2,000 to cover Vice Mayor Hamilton's use.

Councilmember Howe moved, and Councilmember Whittum seconded, the modification to the motion.

Revised MOTION: Councilmember Howe moved, and Councilmember Whittum seconded, to approve Alternatives No. 1, No.3, and modified Alternative No.5:

Alternative No.1: Council approves carryover of \$50,620 in allocated but unexpended State of the City funds from FY 2007/08 to FY 2008/09, and

Alternative No.3: Council restores \$28,000 in funding for the FY 2008/09 State of the City Event.

Modified Alternative No. 5: Council approves carryover of \$2,000 in allocated, but unexpended technology allowance funds from FY 2007/08 to FY 2008/09 for City Council.

Councilmember Moylan offered a friendly amendment to continue to pay the ongoing monthly charges only, and return any unused funds at the end of the fiscal year. Councilmember Moylan explained it is difficult to estimate what the ongoing expenses will be, and he is concerned that a Councilmember might reach the \$2,000 limit prior to the end of the fiscal year: therefore having to pay remaining ongoing expense themselves.

Councilmember Howe did not accept the friendly amendment. Councilmember Howe stated the ongoing expenses are \$45 a month per Councilmember; therefore, the limit of \$2,000 will cover the number of Councilmembers using the funds.

Public comments opened at 7:18 p.m.

No speakers.

Public comments closed at 7:18 p.m.

VOTE: 3-3 (Councilmembers Moylan, Lee, Mayor Spitaleri dissented and Vice Mayor Hamilton absent)

MOTION FAILED

MOTION: Councilmember Lee moved, and Councilmember Moylan seconded, to approve Alternatives No.1, No. 3, and No.5:

Alternative No.1: Council approves carryover of \$50,620 in allocated but unexpended State of the City funds from FY 2007/08 to FY 2008/09;

Alternative No.3: Council restores \$28,000 in funding for the FY 2008/09 State of the City Event;

Alternative No.5: Council approves carryover in the amount of \$6,553 in allocated, but unexpended technology allowance funds from FY 2007/08 to FY 2008/09 for City Council.

Councilmember Lee stated he did not have enough information to support Councilmember Howe's original motion at this time.

Councilmember Swegles stated he will not support the motion. Councilmember Swegles stated he does not use the monthly allowance and supports reducing the allowance and returning the funds the General Fund.

Councilmember Whittum offered a friendly amendment to remove Alternative No.3 from the motion and leave those funds in the General Fund.

Councilmember Lee did not accept the friendly amendment, but offered to pull Alternative No. 3 from his motion to vote on it separately. Councilmember Whittum declined.

VOTE: 3-3 (Councilmembers Howe, Swegles and Whittum dissented, and Vice Mayor Hamilton absent)

MOTION FAILED

MOTION: Councilmember Howe moved, and Councilmember Moylan seconded, to continue this item to the Council meeting of December 2, 2008.

VOTE: 6-0 (Vice Mayor Hamilton absent)

Personnel

- 1.F. RESOLUTION City Manager and City Attorney: Salary Adjustment of Control Point;
RTC 08-336 Approval of City Manager's Pay for Performance Bonus in Accordance
with the Agreement for Services between the City of Sunnyvale and the
City Manager; Amendment to the Agreement for Services between the
City of Sunnyvale and the City Attorney; and Amendment to the
Schedule of Pay for Pay Plan Category F**

Councilmember Howe stated he pulled this item to offer comments and to thank City Manager Chan, City Attorney Kahn and staff for their outstanding work during FY 2007/08.

Public comments opened at 7:23 p.m.

Patrick Meyering stated he was dissatisfied with City Manager Chan's performance regarding: redevelopment projects; downtown development issues; Mathilda bridge renovation; development project of PetSmart and Best Buy, including issues that arose during and after construction; failure to produce an accurate project agreement for distribution of federal funds to the Blind Center; removal of items from Council minutes and erosion of employee morale.

Denise DeLange stated concern about City Manager Chan's salary increases, which totaled 21 percent over the past three years. DeLange stated the justification for the increase came from comparing Sunnyvale's city manager salary against the top 20 cities in the state and questioned whether that was an accurate comparison. DeLange stated the city manager's salary is four times that of the median salary for employees in Santa Clara County, and is not in favor of raising the city manager's salary in the current economic climate.

Public comments closed at 7:28 p.m.

Councilmember Howe requested Director of Human Resources Erwin Young explain how the performance evaluations for the city manager and city attorney are conducted. Director Young explained that the City conducts an extensive evaluation of the performance of both the city manager and city attorney; an outside third-party consultant is hired to conduct individual interviews with Councilmembers and develops a ranking from specific questions; and the consultant interviews employees and clients of the City, and those responses are part of an evaluation process which is also ranked. Once all the information is compiled by the consultant, it is reviewed by Council in closed session.

MOTION: Councilmember Howe moved, and Councilmember Swegles seconded, to approve Alternative No.1: Council approves implementation of the salary adjustment to the control points for city manager (2.5 percent) and city attorney (5.0 percent increase) based on Council direction given to staff at the closed session on November 3, 2008; Council authorizes a 10 percent performance bonus for the city manager for Fiscal Year 2007/08, based on Council direction given to staff at the closed session on November 3, 2008; Council amends the Agreement for Services with the city attorney and authorizes the mayor to execute the Amendment to the Agreement for Services; and amends the Salary Schedule for the classification of Director of Employment Development (Pay Plan Category F Job Code 0140).

Councilmember Howe stated that consideration of a performance bonus for the city manager is in accordance with the employment contract that the City has with the city manager. The performance bonus determination was a comprehensive process assisted by a consultant.

Each Councilmember was interviewed, and staff who directly report to the city manager also provided confidential anonymous feedback to the consultant as to how the city manager managed the City and how she provided leadership for their departments during FY 2007/08. Councilmember Howe said Council used the data collected and the city manager performance review to individually provide a performance rating. A total aggregate ranking was determined and resulted in a 10 percent bonus for the city manager for FY 2007/08.

Councilmember Howe commented on the city manager's performance for FY 2007/08 (basis for evaluating city manager's work performance) and reviewed a list of accomplishments and requested that his written comments be included in the minutes as an attachment. Councilmember Howe apologized for his lengthy comments, but stated he wished to provide the context for the city manager's performance during the past fiscal year.

Councilmember Howe stated Council has two employees: the city manager and city attorney, who have contracts with the City. If Council does not approve this item, after going through the performance process, Council will be in breach of the two contracts.

Councilmember Howe thanked City Manager Chan for her dedication, contributions and outstanding work as city manager of Sunnyvale, and stated the tremendous benefit the City received when Council appointed Chan city manager. Due to her broad institutional knowledge, her transition into the position of city manager was seamless. Councilmember Howe explained that City Manager Chan actually worked as the city manager and assistant city manager for a period of 15 months. Councilmember Howe concluded his comments by commending City Manager Chan on her tremendous negotiating skills, her ability to save the City millions of dollars, and accomplishments which saved the City more than her salary and bonuses.

Councilmember Whittum stated he opposed the motion; however, he wanted to thank the city manager for her service to the City. Councilmember Whittum explained he opposed the motion for several reasons: the motion included pay increases/bonuses for the city attorney and the director of NOVA; he wanted to see an updated estimate of the City's revenues; and he opposed raises at a level of 5 percent for staff and approval of above 5 percent for leadership.

Councilmember Whittum said should Council not approve this item, he had not identified any problems with the contract. The city manager's resignation letter was received approximately a year ago, which covers the period of time being discussed, and the contract specifically mentions post receipt of a resignation letter. Councilmember Whittum stated it is important to view this as a business operation and to place responsibility for the City's performance where it belongs – with Council. Councilmember Whittum stated it is important to appreciate all City employees.

Councilmember Howe asked the mayor to direct staff to include his comments regarding the city manager as an attachment to the minutes of this meeting, provided there were no objections from Council. Mayor Spitaleri asked Council and received no objections. Mayor Spitaleri directed staff to include Councilmember Howe's comments as an attachment (Attachment A) to the minutes of this meeting.

Councilmember Moylan explained the bonuses being discussed are actually variable pay components, which could be a positive or negative amount. However, future contracts for the city manager and city attorney have been streamlined and the variable pay component has been removed.

Councilmember Moylan stated it is necessary for the City to keep pace with salaries in the

marketplace to retain employees and to maintain the excellent level of service expected, the City must pay a competitive wage. Councilmember Moylan added that it is easier to be a city manager during a good economy; however, when the economy turns down, the job of a city manager becomes harder and, subsequently, it is even harder to obtain an outstanding performance. Bad economic years are quite challenging for cities; however, City Manager Chan rose to the challenge this past year.

Mayor Spitaleri stated it is a tremendous responsibility to operate a city 24/7 while providing services without disruption. Mayor Spitaleri stated that strong leadership is required along with a well-coordinated team effort to keep the city moving forward, which City Manager Chan demonstrated.

VOTE: 5-1 (Councilmember Whittum dissented and Vice Mayor Hamilton absent)

**1.G. RESOLUTION Amendment to the Schedule of Pay of the Salary Resolution: Salary
RTC 08-338 Adjustment for Pay Plan Category C (applies to Classified Public Safety
Officers and Lieutenants)**

Staff Recommendation: Council amends Section 2.200 (Pay Plan Category C) of the Schedule of Pay of the Salary Resolution to reflect the new pay rates, effective retroactive to July 13, 2008.

Contracts

1.H. RTC 08-340 Award of Contract for Six Police Patrol Cars (F0810-21)

Staff Recommendation: Council awards a contract, in substantially the same form as the attached draft Purchase Order and in the amount of \$149,534 to San Francisco Ford Lincoln Mercury for six police patrol cars.

**1.I. RTC 08-337 Authorization to Modify an Existing Contract for Fire Protection
Engineering Services**

Staff Recommendation: Council modifies an existing contract with Hughes Associates, Inc., in substantially the same form as the attached Agreement Amendment, by increasing the not-to-exceed amount from \$150,000 to \$220,000.

**1.J. RTC 08-332 Lease Between the City of Sunnyvale and T-Mobile USA, Inc., of Ground
Space at Ponderosa Park**

Councilmember Howe stated he pulled this item because he was informed by staff that this item should be continued indefinitely.

MOTION: Councilmember Howe moved, and Councilmember Swegles seconded, to continue this item indefinitely.

Public comments opened at 7:44 p.m.

No speakers.

Public comments closed at 7:44 p.m.

VOTE: 6-0 (Vice Mayor Hamilton absent)

Other Items

1.K. RTC 08-334 2008 Conflict of Interest Code Biennial Review and Amendment

Staff Recommendation: Council adopts the proposed resolution (Attachment C), amending the City's Conflict of Interest Code, in conformance with the Political Reform Act.

PUBLIC COMMENTS

Harriet Rowe expressed appreciation for the outstanding job City Manager Chan has done for the City of Sunnyvale, and thanked City Manager Chan for promoting open government, particularly for promoting study sessions; participation at City events; her desire to meet with the citizens of the community; and for making herself accessible. Rowe stated City Manager Chan's graciousness is an asset that cannot be bought, and her assets and efforts will be missed.

Arthur Schwartz requested Council meet with Stewart McGee and issue a formal letter to the Navy opposing their plan to leave only the frame of the hangar in place, and urged Council to include in the letter the City's support for restoration of Hangar One.

PUBLIC HEARINGS/GENERAL BUSINESS

2. RTC 08-333 Consideration of Proposed Art Donation

Superintendent of Recreation Nancy Bolgard Steward presented the staff report.

Public hearing opened at 7:53 p.m.

Councilmember Whittum disclosed he met with Flo Oy Wong and attended the opening of her exhibition.

Councilmember Swegles disclosed he met with Wong and viewed her work.

Bob Obrey, Chair of the Arts Commission, stated the commission voted 3-0 to accept the donation of artwork from Wong and requested staff install the artwork at the Sunnyvale Senior Center.

Wong explained the artwork she wishes to donate to the City was created at the Raynor Activity Center and honors her sister. Wong provided a PowerPoint presentation of her artwork.

Councilmember Lee thanked Wong for her generosity and verified that Wong spent three years working on this series of her artwork.

Public hearing closed at 8:06 p.m.

MOTION: Councilmember Swegles moved and Councilmember Lee seconded, to approve Alternative No.1: Council approves acceptance of the proposed donation of artwork from Ms. Flo Oy Wong and directs staff to install the art at the Sunnyvale Senior Center.

Councilmember Lee stated the proposed piece of artwork will offer significant educational value to the community, in addition to its artistic value. Councilmember Lee thanked Wong for her donation.

Councilmember Moylan thanked Wong for her donation. Councilmember Moylan stated his opposition to the proposed location for the artwork and suggested the art be placed in an area where more people would be able to view the piece. Councilmember Moylan offered the artwork reside in the new Historical Society Museum because of the historical nature of the artwork, or in the Creative Arts Center Gallery so everyone interested in art could view the piece and be encouraged by its creativity. Councilmember Moylan stated he supported Alternative No. 2.

Councilmember Swegles stated the Senior Center is actively used and the art would be appreciated just as much at the Senior Center as any other location. Councilmember Swegles noted the artwork is about Wong's sister, who is very active at the center; therefore, he preferred placing the artwork at the Senior Center.

Mayor Spitaleri stated it is important to share the history of Sunnyvale with the youth in the community; however, he fully supported Wong's request to have her artwork placed at the Senior Center.

VOTE: 5-1 (Councilmember Moylan dissented and Vice Mayor Hamilton absent)

3. **RTC 08-329 2008-0870 – Ryan Madson [Applicant] Cherry Garden Apartments LLC [Owner]: Application for related proposal located at 1248 Brookfield Avenue (near S. Knickerbocker Dr.) in R-3 (Medium Density Residential) Zoning District.**
~Rezone from R-3 (Medium Density Residential) to R-3/PD (Medium Density Residential/Planned Development) Zoning District;
~Special Development Permit to convert an existing 8-unit apartment complex to 6 condominiums;
~Tentative Map to create 6 new condominium units.

Planning Officer Trudi Ryan presented the staff report.

Councilmember Whittum inquired about the cost of the tenant relocation plan. Planning Officer Ryan stated that level of detail was not included since the plan has not yet been prepared; however, there are minimum requirements – finding housing at a similar or better cost than what residents were currently paying – from the state when a project is converted from an apartment to a condominium, and that information was included in the staff report. Councilmember Whittum verified the relocation services would be available to all eight tenants.

Public hearing opened at 8:18 p.m.

William Maston, applicant, spoke in support of the staff recommendation to rezone this area and approve the Special Development Permit. Matson stated they are in agreement with the staff report and additional conditions of approval placed on this project by the Planning Commission.

Angela Onorato stated her concerns about being displaced and requested assistance with relocation expenses and that her entire security deposit be refunded.

Councilmember Lee asked if the security deposits will be refunded. Planning Officer Ryan stated that the relocation assistance packages that staff previously researched almost always included a full refund of the original deposit, and it appears to be standard practice for a tenant relocation package. Planning Officer Ryan stated if Council has concerns about this issue, it would be appropriate to add language requiring full refund of tenant deposits to the motion.

Maston verified that the tenant deposits would be fully refunded to the tenants.

Public hearing closed at 8:28 p.m.

MOTION: Councilmember Howe moved, and Councilmember Moylan seconded, to approve Alternative No.1: Council introduces an Ordinance to Rezone 1248 Brookfield Avenue from R-3 to R-3/PD, and approves the Special Development Permit and Tentative Map with the attached conditions.

City Clerk Gail Borkowski read the title of the ordinance into the record.

VOTE: 6-0 (Vice Mayor Hamilton absent)

4. **RTC 08-335 2006-0712 – Trumark Companies [Applicant] Ray Street Office, LLC. [Owner] Application for related proposals on a 6.63 acre site located at 1275 and 1287 Lawrence Station Road (near Elko Drive) in an M-S (Industrial & Service) Zoning District. (APNs: 110-15-045, 110-15-044); Certify the Environmental Impact Report**

Councilmember Whittum disclosed he met with the applicant and spoke on the phone with a representative of FedEx, a neighbor to this project.

Councilmember Swegles disclosed he met with the applicant on several occasions.

Councilmember Moylan disclosed he had communications with the applicant's team.

Councilmember Lee disclosed he met with the applicant's team.

Councilmember Howe disclosed he met with the applicants and also members of the public regarding this specific item.

Mayor Spitaleri disclosed he met with the applicants over a period of three years along with citizens regarding this project.

Principal Planner Gerri Caruso presented the staff report.

Principal Planner Caruso explained the Trumark development project review will have three parts, consisting of three separate staff reports, and three separate public hearings. Council will first consider certification of the Environmental Impact Report (EIR). Council will then determine whether or not to adopt a new ordinance to create a new Mixed-use Zoning District classification, which would become part of the municipal code, and finally, Council will consider the proposed Trumark development.

Principal Planner Caruso explained approval of the Trumark development project would require Council to first certify the EIR and approve creation of a new Mixed-use Zoning District.

Principal Planner Caruso noted her presentation will be in regard to certification of the EIR.

Councilmember Moylan inquired about a discrepancy in the report which states that carbon monoxide is the pollutant of greatest concern; however, the EIR states that the particulates will be the greatest problem. David Power and Associates, EIR consultants, responded that the EIR is referring to local air quality, and carbon monoxide is the focus used for intersection congestion; whereas, diesel particulate is more of an exposure to the project, not created by

traffic trips from the project. Councilmember Moylan verified that carbon monoxide is an impact caused by the project and the traffic, and particulates are an impact to those who live in the project.

Councilmember Moylan and the EIR consultants discussed several factors of the EIR report in detail.

Councilmember Moylan questioned whether it would have been more accurate to have measured the actual particulate matter to predict the cancer risk as opposed to the calculations performed for the EIR report. The EIR consultant explained diesel particulate matter is not measurable. Councilmember Moylan explained that particulates can be measured; however, the source of that matter would not be identifiable. Councilmember Moylan further explained that the information needed is not the source of the particle, rather the amount of carbon particulates that could be breathed in by residents in the area. Councilmember Moylan verified with the environmental consultant that particulate matter can be measured, but it is the diesel particulate matter that is specifically toxic. The EIR consultant explained that diesel particulate matter represents a whole group of contaminants that are grouped into particulate matter and make up the biggest risk of all toxic air contaminants in the state.

Councilmember Moylan stated his concern is about the inability of the consultant to identify an uncertainty level on the result. Councilmember Moylan explained that without the knowledge as to whether the particular matter would create a significant impact, it is almost impossible to make a decision on the EIR for this project. Councilmember Moylan stated how important it is to know the uncertainty level in order to make the finding on this project as to whether the result is above or below the air quality threshold. Without knowing the uncertainty levels, the risk could go either way. The assumptions might be better than projected, or worse than projected, and without knowing the plus or minus of that assumption, the end result is not really accurate.

A discussion ensued between Councilmember Whittum and the EIR consultants regarding concerns over the EIR report.

Councilmember Whittum verified with an EIR consultant that sewer hookups from the proposed project would contribute to the sewer flow by up to 2.9 percent under wet weather conditions.

Councilmember Whittum inquired about what the effects would be on residents of the proposed project should one of the nearby companies, Advanced Chemical Transport, have a spill of infectious or radioactive waste. A consultant from Cornerstone Earth Group explained that his company performed the modeling of hazardous material releases in the general area, and they determined what to model by using guidelines from the Sunnyvale Public Safety Department. Cornerstone Earth Group reviewed the records of hazardous materials use and in the available chemical inventories, they were not provided that type of information. The Cornerstone consultant stated the activity of the radioactive material is unknown, other than that it was rarely transported, amounted to less than 50 pounds, and infectious waste was likely limited to medical waste. The consultant further explained they were not able to see the specifics in the available chemical inventories; therefore, those items were not modeled.

Councilmember Whittum inquired about increased pedestrian activity from the project and the transportation consultant explained that an assumption was made about the level of pedestrian and auto activity. In this case it was assumed that 95 percent of the residents in

the area would use their cars for transportation, resulting in more traffic at the intersection from the project. However, promoting public transit use for the project will offset the increased auto traffic.

Councilmember Whittum inquired if there will be gates at the driveways for this project and if so, how will the issue of spillback from the driveways be resolved. The transportation consultant explained this item was identified in the EIR as an issue and it was thought that it would be addressed at the building permit stage when more details of the gate design are known. The EIR consultant added that queuing in front of the driveway is an operational traffic issue that will be addressed at an operational site design level.

Councilmember Whittum verified with the EIR consultant that the proposed project does not result in any impacts to the level of service at the Lawrence Expressway intersections and mitigation was not required.

Councilmember Whittum questioned why lower future emissions are being taken into account in the Air Quality section of the EIR for this project, when in fact traffic volumes will actually increase over the years. The EIR consultant stated that although traffic volumes will go up, emission rate from cars, particularly trucks, will significantly decrease.

Councilmember Whittum continued discussion on diesel particulate matter and air quality, sewer odor and soil testing with the EIR consultants.

Councilmember Swegles inquired as to what the traveling distance would be for particulate matter to dissolve. The EIR consultant stated that it varies from hour to hour. The entire highway network, including the ramps and Lawrence Expressway, are added in and what is actually calculated is the annual average; therefore, one hour might be much higher than the annual average.

Councilmember Swegles inquired as to whether particulate matter dissipates over any distance and the EIR consultant responded that it disperses over distance and the concentration levels are much higher when they are closer together rather than further away.

Councilmember Whittum inquired about the traffic analysis and how can 50 peak-hour trips be added and at the same time the average trips can be reduced. The EIR consultant responded that the decrease in trips at certain intersections is a result in the change of use.

Councilmember Swegles inquired as to whether the EIR consultants looked at the nearby existing mobile home communities, close to highway 237, to see if any health problems had developed. The EIR consultant responded that no survey or analysis of health risks had been conducted regarding existing homes.

Public hearing opened at 9:09 p.m.

Arron Yakligian, applicant, stated that Trumark's concern regarding the EIR is the current mitigation requirements for the diesel particulate matter. Yakligian stated that Trumark has presented technical evidence to show the mitigation needed has been overstated. Trumark agreed to be fully accountable for the operation and effectiveness of the filtration mitigation for 14 of the 338 homes. Yakligian stated Trumark requested Council to exercise the City's authority under the California Environmental Quality Act (CEQA) as lead agency, to make the final determination as follows: Council to certify the EIR with the findings that it is unnecessary to delay occupancy because the diesel particulate matter filtration (Mitigation Measure AIR –

4.1) is effective and can mitigate the impact to a less-than-significant level. The additionally proposed mitigation of delayed occupancy is not feasible.

Councilmember Swegles noted he is not aware of any health problems, other than normal aging, from the 26 residents at the mobile home community of Willow Ranch. Councilmember Swegles stated that living close to a heavily traveled roadway does not appear to generate problems as projected. Councilmember Swegles said some residents have lived in the mobile home park for over 30 years without health problems, and that fact provides documentation that there is not a problem with particulates from State Route 237. Yakligian agreed with Councilmember Swegles and explained that car emissions have been reduced and will continue to be reduced. With mitigation in place, the project will be starting with a less-than-significant exposure, less particulates than are currently at the site.

Councilmember Howe verified with staff that the Planning Commission approved this project. However, they were unable to make the Statements of Overriding Consideration, so they approved the project with mitigation; thereby, leaving 14 units vacant for a period of time. Councilmember Howe verified with staff that vacant units are the same ones identified in the EIR.

Councilmember Howe inquired if there would be an independent monitoring of the filtration. Principal Planner Caruso stated staff does not have the expertise needed to monitor the filtration. Therefore, it would have to be done independently. The EIR consultant stated the filtration would help on the interior basis, but the threshold is based on the exterior, which is exceeded. The Air Quality District standard is only for the exterior. Councilmember Howe responded that his question was who would specifically perform the test on the filtration. The EIR consultant explained there is no standard procedure for performing a test, inside or out; it would only be determined through design with the proper positive air flows and filtration. Councilmember Howe confirmed that a mechanical engineer would be required, but the EIR consultant was not aware of mechanical engineers who would be available for this particular issue.

Councilmember Moylan referenced a letter received November 7, 2008, from Morrison and Foerster, CEQA attorney for Trumark Companies. It stated if the City finds it necessary to require the delayed occupancy mitigation measure, then the mitigation measure should be revised so that the units may be occupied once the applicant can demonstrate that risk is at acceptable levels. Councilmember Moylan asked the applicant to explain how they would accomplish documenting that risk is acceptable so the units could eventually be occupied. Councilmember Moylan explained that the air quality standard is very conservative and if there is an additional uncertainty, such as how the concentration of particulates is calculated, how would the applicant go about demonstrating that the area is safe? Yakligian stated they would demonstrate the area is safe through risk assessment.

Councilmember Whittum stated the source of the diesel particulate matter appears to be coming from the vehicles accelerating out of the intersection at Elko and Lawrence Expressway, and not State Highway 237. The EIR consultant stated the source is a combination of both; however, the greatest contribution is the entrance ramp at Lawrence Expressway. Councilmember Whittum verified with the EIR consultant that the units in question are between the intersection and the entrance ramp, next to the northbound lane of Lawrence Expressway.

Councilmember Whittum questioned what the objection was to a 16-foot sound wall instead of a 10-foot wall. Yakligian stated the taller fence would be more expensive, would require additional footing and the esthetics of a 16-foot wall would not be appropriate for the residents' livability.

Miles Imwalle stated he wished to respond to Councilmember Moylan's earlier question. Imwalle explained Trumark would accomplish identifying that the area is safe by conducting a health assessment. Imwalle stated Trumark is asking Council to give them the opportunity to prove the impact is less-than-significant, and at that point, they can then allow the units to be occupied.

Councilmember Swegles asked Imwalle if the fact there had not been health problems with the residents at the Willow Ranch Mobile Home Park supported a history of no problems in that area, and Imwalle agreed.

Imwalle stated since there are no guidelines on filtration of particulate matter at this time, the City should look to other agencies who have guidelines and can offer data on how filtration is an effective mitigation measure in lowering diesel particulate matter levels.

Dan Hernandez stated he is a consulting industrial hygienist and toxicologist engaged in Risk Assessment, and has assisted the City's Waste Water Pollution Control Plant with potential risks associated outside the plant area. Hernandez stated he wished to bring perspective to the concern over potential cancer risks, and explained that exposure to diesel particulate matter at its highest concentration over a 70-year period would have an equivalent amount of cancer risk as compared to many routine daily activities. Hernandez noted the risk assessment, as performed, was conservative, and he pointed out errors in the assessment. Hernandez stated that the mitigation proposed to institute filtration will reduce the risk by 60 percent or more.

Councilmember Whittum verified with Hernandez that a 16-foot wall would contribute to a reduction in exposure.

Councilmember Moylan asked Hernandez how he would suggest the applicant would demonstrate the risk was less than the airborne standard, thereby allowing the units to be occupied. Councilmember Moylan inquired if real measurements would be used from the site and Hernandez explained, although difficult, diesel particulate matter could be measured by upwind and downwind concentrations.

Denise DeLange requested Council consider mitigation measures of adding trees to the project for air quality.

Eleanor Hansen stated concerns about cancer risks from the particulate matter and suggested Council consider using the best available technology to measure the particulates. Hansen stated using a baseline of 2020 confuses the situation.

Yakligian offered final comments. Yakligian explained he appreciates concerns from the public regarding health risks, but he encouraged Council to look at the factual evidence and the adequacy of the EIR. Yakligian explained Trumark is not arguing the model and that the mitigation efforts are a way for Trumark to guarantee they are not subjecting the public to health risks. Yakligian responded to the previous speaker's comments about trees and explained that over 250 trees will remain in place. Yakligian stated that Trumark is requesting Council find the impact can be mitigated to a less-than-significant level, and that delayed occupancy is not feasible.

Public hearing closed at 9:47 p.m.

Councilmember Moylan inquired if Council were to add an additional measure to the mitigation plan requiring the units remain unoccupied until the applicant proves the area is safe for occupancy, through direct measurements and the best available technology, would that cause the EIR to be modified as a consequence. Councilmember Moylan verified with the EIR consultant that should Council approve the requirement for an additional mitigation measure, then that would reduce the impact and require modification to the text of the EIR; however, it would require recirculation of the EIR. The EIR consultant explained that a Statement of Overriding Considerations would be required for the cumulative regional air quality impact for the pollutants generated by the project's traffic trips.

Councilmember Moylan verified with the city attorney that since Council had not previously adopted a standard, the City is required to set a standard. City Attorney Kahn stated the City would be able to study appropriate standards for emissions of diesel particulates and adopt separate standards. Adoption of the standards would require approval of an ordinance, and a public hearing would need to be held along with conducting a study. However, the City has not done this; therefore, Council's decision is based on the current standards from the Bay Area Air Quality Management District.

Councilmember Moylan stated his concern is that it is being said that since it is an external environment, it does not matter, and on the other hand, it is being said that the filters are not good enough and we don't trust them to work.

Councilmember Moylan verified with staff that if Council were to draft an additional mitigation measure, the EIR would need to be revised to include that the diesel particulate matter, which concerns the effect of the external environment on those who may inhabit the project area, could be mitigated to a less-than-significant level. However, the EIR would still need to state the effect of the project itself on the external environment, from any traffic the project might generate, would be significant, and that would need to be dealt with in a future agenda item.

Councilmember Whittum explained the applicant provided Council with excerpts from the City of San Francisco's General Plan related to standards. Councilmember Whittum verified with staff that Council would address Overriding Considerations at the time the project is reviewed. At that point, Council could consider what can be done to reduce the impact, even though it might still be significant.

City Attorney Kahn clarified the summary of options with Councilmember Moylan. City Attorney Kahn stated that adoption of the proposed mitigation measure could have the finding that the diesel impacts would be reduced to a less-than-significant level and that would not require a Statement of Overriding Consideration, since the risk would have been reduced to a less-than-significant level. City Attorney Kahn explained the cumulative impact' however, would still be at a significant level, and would require a separate Statement of Overriding Consideration, but it would only address the cumulative impact instead the project impact from the diesel particulates. Councilmember Moylan agreed that was the intent of his statements.

MOTION: Councilmember Howe moved, and Councilmember Swegles seconded, to approve Alternative No.1: Council adopts a resolution certifying the Environmental Impact Report (EIR) and adopting the Mitigation Monitoring and Reporting Program **with** units may be occupied once the applicant demonstrates, using the best available technology and direct measurements of particulate concentrations, that the risk is at an

acceptable level, which would go before the Planning Commission and would have the ability to be appealed to Council. The applicant would develop a written plan outlining how they plan to reach the acceptable level and what technology would be involved. The applicant would submit their plan to City staff and pay reasonable costs for the City to hire an independent and knowledgeable consultant to verify the plan prior to the plan going to the Planning Commission. The plan would be reviewed by the Planning Commission and the applicant would have the ability to appeal the plan to Council during a public hearing.

Councilmember Moylan stated the uncertainty of the calculation was great enough that he would not have voted to certify the EIR without the addition to the staff recommendation as identified by Councilmember Howe's motion.

Councilmember Moylan requested that in the future, whenever possible, real data are to be used for EIR's and that staff minimize the use of simulated calculations.

Councilmember Moylan explained that the motion includes the modification to the mitigation program, which adjusted the EIR to say that one of the two significant impacts now becomes mitigated to less-than-significant. Councilmember Moylan explained the diesel particulate matter in the EIR will now state that it is less than significant; whereas, the cumulative impact of the project will remain at a significant level.

Councilmember Whittum stated this motion will delay occupancy until an actual mechanical measurement by a third party can demonstrate actual levels. Councilmember Moylan explained the implication of the motion was to delay occupancy until it is determined safe by meeting the Bay Area Air Quality standard, and the internal filtration system remains in the mitigation program.

Councilmember Whittum explained he will support the motion; however, the use of the traffic impact analysis guidelines is questionable. The guidelines themselves state the traffic impact analysis is not intended to provide all the information required for CEQA purposes. Councilmember Whittum stated the positive aspects of the project include the location, close to two light rail stations, and the fact the applicant is improving the connection to one of the stations. Councilmember Whittum stated he is hopeful that one day there will be more pedestrian use and less vehicle trips than the projected 150 peak hour trips.

VOTE: 6-0 (Vice Mayor Hamilton absent)

5. **ORDINANCE** **2006-0712 – Trumark Companies [Applicant] Ray Street Office, LLC.**
RTC 08-330 **[Owner] Application for related proposals on a 6.63 acre site located**
 at 1275 and 1287 Lawrence Station Road (near Elko Drive) in an M-S
 (Industrial & Service) Zoning District. (APNs: 110-15-045, 110-15-044)
 Amend Title 19 of the Sunnyvale Municipal Code (Zoning) to create a
 Mixed-use Zoning Combining District (MU), which may be combined
 with the R-3, R-4, and R-5 Residential Zoning Districts

Councilmember Howe requested a brief recess and Mayor Spitaleri agreed.
Mayor Spitaleri reconvened the meeting at 10:10 p.m.

Councilmember Howe disclosed he met with the applicants and members of the public regarding this specific item.

Mayor Spitaleri disclosed he met with the applicants and citizens regarding this project.

Senior Planner Steve Lynch presented the staff report.

Councilmember Howe inquired as to what type of approval process will be used for the non-live/work portion of the project. Senior Planner Lynch responded that staff combined it with the C1 (Commercial Zone) process.

Councilmember Howe stated he supports useful retail, such as a pharmacy, that benefits the area. Councilmember Howe verified with Planning Officer Ryan that once a site receives a Mixed-use Combining District for the zoning, a Special Development Permit would be required to develop the site. Further, both residential and commercial spaces would be evaluated and the Special Development Permit would establish the nature of the uses permitted consistent with the C1 uses, or require further restrictions or a more detailed review. Planning Officer Ryan explained that staff typically does not establish a retail use as a certain character type of use; however, a particular type of retail use has been listed under the conditions of approval in the past.

Councilmember Howe verified with Planning Officer Ryan that once the initial development is approved, it would depend on how the conditions of approval are phrased as to who would approve the Special Development Permit.

Councilmember Howe inquired how staff arrived at allowing 50 percent of the floor plan for the non-residential component of the live/work unit to be counted towards the minimum or maximum commercial/office standard. Senior Planner Lynch explained staff used 50 percent because the live/work units were introduced to help the project achieve the commercial minimum percentage. Staff contacted other cities and the consensus was that most live/work units turn into all residential units eventually, especially if the project is more residential in nature from the start.

Councilmember Howe asked if this project went to 100 percent, what would be the required square footage for commercial use, and Planning Officer Ryan responded the requirement is based on the lot size and it would be 10 percent of the area, approximately six acres. The applicant could meet the 10 percent with a combination of 16,000 square feet of retail, and about 8,000 square feet of live/work space.

Planning Officer Ryan noted at the Planning Commission hearing, the applicant stated they would be able to meet a change to 75 percent, if requested. Planning Officer Ryan said staff was in favor of 50 percent; however, it could be changed by Council.

Mayor Spitaleri verified with Director of Community Development Hanson Hom that 50 percent is a flexible number. Director Hom explained that 50 percent recognizes the enforceability of the live/work space and the fact that in reality, for a period of time, the live/work spaces are not work units. Director Hom stated that 50 percent also recognizes the character of live/work spaces as retail space versus the 100 percent for storefront retail. The question arises with a mixed-use project as to whether the same amount of retail presence is achieved by the same square footage of live/work versus storefront retail. Director Hom explained that staff's perception is that there is a distinction in the quality of the type of retail spaces, so Council may not want to count live/work in the same way as storefront retail. Director Hom reiterated that there is a difference in the character of retail live/work unit versus storefront retail.

Mayor Spitaleri verified with Director Hom that staff is supportive and encouraged at the possibility of adding mixed-use projects for live/work to the City's zoning code.

Councilmember Whittum verified with Planning Officer Ryan that donation trailers can exist at the mixed-use projects with a miscellaneous plan permit; however, there are location requirements, per Council policy, and a mixed-use project may not be able to meet the location requirements.

Councilmember Whittum verified with Planning Officer Ryan that consideration of this item requires developing a new zoning district which is independent of the specific project site; however, the subsequent application does help to inform Council about the decisions Council might want to make regarding this zoning district. Planning Officer Ryan stated Council could approve a Mixed-use Zoning District; however, they do not have to apply it to the subsequent application.

Public hearing opened at 10:34 p.m.

Garrett Hinds, Director of Architecture for Trumark Companies and a certified planner with American Planning Association, explained the proposed Mixed-use Combining District was created as a recommendation by staff to accommodate Trumark's proposed mixed-use neighborhood. Trumark funded City staff time to create this new zoning district and significantly broadened the scope of their EIR to accommodate the analysis of this proposed district. Hinds stated Trumark is in favor of the Mixed-use Combining District and his design promotes the live/work units. Hinds gave a PowerPoint presentation regarding the proposed project, and spoke against the 50 percent requirement. Hinds passed out a copy of Trumark's request that Council consider approval of the Mixed-use Combining District with the flexibility to allow 100 percent of the live/work ground floor area to count as non-residential use area.

Councilmember Swegles verified with Hinds there will be a total of 16 live/work units with 13 units offering 770 square feet downstairs, and three of the units offering 1,064 square feet of office space. For all units, the upstairs portion of the unit will offer similar square footage. Councilmember Swegles also verified with Hinds that Trumark's position is that allowing only 50 percent of the floor area as retail will discourage live/work use.

Councilmember Lee verified with Hinds that if the percentage were changed to 75 percent, Trumark's project would still be viable.

Councilmember Moylan called for a point of order and explained that the agenda item regards a new type of zoning district which staff has created and which might apply to this particular agenda item or any other project with similar circumstances. There is not an applicant for this agenda item since the item is coming to Council from staff. Councilmember Moylan cautioned that Council should not be discussing this particular project during Council consideration of this agenda item. Planning Officer Ryan responded that the applicant made the application for the General Plan amendment, the rezoning, and the Special Development Permit, and staff considers Trumark to be the co-applicant with the City on creating a new zoning district.

Councilmember Moylan stated he is reviewing this item and considering how to craft this zoning district for future applications, not just the applicant's project.

Public hearing closed at 10:42 p.m.

MOTION: Councilmember Moylan moved, and Councilmember Howe seconded, to approve Alternative No.2: Council approves Alternative A (meaning Alternative 1) with modifications (such as allowing greater lot coverage by 10 percent or not allowing an increased height limit to 10 feet)

with modification to item number 7: The non-residential portions of live/work units may be counted towards the minimum commercial requirement up to 50 percent of that requirement.

Councilmember Moylan explained this would eliminate stating that only half of the commercial part will count, but would also deal with staff's point that it would not be good to make the entire commercial part all live/work units. Councilmember Moylan noted that for every live/work unit, the whole work part could count as commercial; however, the entire site could not be handled in that manner.

Councilmember Howe questioned staff if any business could operate without a business license in the live/work portion of this project. Senior Planner Lynch stated that the City is not allowed to require a business license for small family daycare.

Councilmember Howe offered a friendly amendment to add the following items to the motion:

- Information shall come back to Council regarding the effectiveness of the ordinance one year after three projects have been approved in this zoning district; and
- Windows in the live/work units shall remain clear; and
- Occupied live/work units must have a valid business license with the exception of small family daycare or anything that state law specifically exempts.

Councilmember Moylan accepted all three friendly amendments.

Councilmember Whittum offered a friendly amendment to correct the ordinance, Page 1, Paragraph b (Section 19.26.220) to read as follows (with removal of strikeouts and inserts as highlighted): Mixed-use development should only be considered if they are located adjacent ~~(within ½ mile)~~ **(within 1/3 mile)** to a ~~major expressway, arterial street, or public transit stop~~ (VTA Light Rail or Caltrain). Councilmember Whittum noted the present project Council is about to consider meets this condition.

Councilmember Moylan verified with Councilmember Whittum that changing the ½ mile to 1/3 mile is to allow for a better walking distance, and the proposed project fits this distance. Councilmember Moylan stated he respects the intent of the friendly amendment; however, he does not support tailoring items to fit the pending project. Councilmember Whittum stated he is not attempting to match the project, rather he is pointing out the project satisfies his requested change to the ordinance. Councilmember Whittum explained his concern was promoting a dense use on a major expressway without public transit.

Councilmember Moylan stated he would accept removal of the major expressway and arterial street, but would not accept changing the ½ mile to 1/3 mile. Councilmember Whittum agreed.

Director Hom expressed concern that removal of the major expressway from the ordinance would further restrict the applicability of where a mixed-use could be located.

Councilmember Moylan stated he understood, and revised his approval of the friendly amendment to only removing *arterial street* from the ordinance text in Section b, Page 1. Councilmember Howe accepted the friendly amendment, as revised, by Councilmember Moylan.

Councilmember Swegles offered a friendly amendment to include bus stops. Councilmember Moylan stated he appreciated what Councilmember Swegles offered; however, listing bus stops would allow a huge increase in mixed-use areas within the City due to the numerous bus stops throughout the City. Councilmember Moylan stated that would be going too far and did not accept the friendly amendment.

Restated MOTION: Councilmember Moylan moved, and Councilmember Howe seconded, to approve Alternative No. 2: Council approves Alternative A (meaning Alternative 1) with modifications (such as allowing greater lot coverage by 10 percent or not allowing an increased height limit to 10 feet)

Alternative 1: Council introduces an ordinance (Attachment A) to amend Title 19 of the Sunnyvale Municipal Code (Zoning) to create a Mixed-use Combining District for the R-3, R-4, and R-5 Residential Zoning Districts, with the following requirements:

1. Minimum lot size shall be two acres; and
2. Commercial/office shall be 10 percent to 25 percent of the lot area (Floor Area Ratio); and
3. Allowance for an increase in height of 10 feet above the base zoning maximum; and
4. Allowance for an increase in the number of stories of one story above the base zoning maximum; and
5. Uses in the C-1 (Neighborhood Commercial) Zoning District can be considered; and
6. Allow live/work units with attached SMC regulations; and
7. **with** modification to item number 7: The non-residential portions of live/work units may be counted towards the minimum commercial requirement up to 50 percent of that requirement.
8. An SDP is required for any new Mixed-use Combining District project;

With the following items:

9. Information shall come back to Council regarding the effectiveness of the ordinance one year after three projects have been approved in this zoning district; and
10. Windows in the live/work areas remain clear; and
11. When live/work areas are occupied, a valid business license shall be required with the exception of a small family daycare or other businesses that state law specifically exempts, and
12. Correction to ordinance (Attachment A) Section 19.26.220, item b, last sentence, with strikeout removal accepted, to read as: Mixed-use development should only be considered if it is located adjacent (within ½ mile) to a major expressway, ~~arterial street~~, or public transit stop (VTA Light Rail or Cal Train).

City Clerk Borkowski read the title of the ordinance into the record.

VOTE: 5-0 (Councilmember Swegles abstained and Vice Mayor Hamilton absent)

Councilmember Swegles explained that he agreed with the motion but thought that bus stops could be added because of the limited access for senior transportation. Since it was not added in, he abstained from voting.

6. **RTC 08-331** **2006-0712 – Trumark Companies [Applicant] Ray Street Office, LLC. [Owner] Application for related proposals on a 6.63 acre site located at 1275 and 1287 Lawrence Station Road (near Elko Drive) in an M-W (Industrial & Service) Zoning District. (APNs: 110-15-045, 110-15-044) ~General Plan Amendment to change the land use designation from Industrial to Very High Density Residential, ~Rezone the site from M-S (Industrial & Service) to R-5/MU (High Density Residential and Office/Mixed Use), ~Statements of Overriding Consideration for air quality impacts associated with the effects of diesel particulate matter on future project residents and related to the project's contribution to cumulative regional air quality impacts.**

**~Special Development Permit to allow development of 338
condominium units and 16,000 square feet of commercial space,
~Vesting Tentative Map for condominium purposes.**

Senior Planner Lynch presented the staff report.

Councilmember Howe disclosed he met with the applicants and members of the public regarding this specific item.

Mayor Spitaleri disclosed he met with the applicants and citizens regarding this project.

Councilmember Howe verified with Senior Planner Lynch that if this project were approved, proposed lot coverage would be 51.7 percent and that should Council approve this project as designed, then the deviation to 51.7 percent would need to be added to the general conditions.

Councilmember Howe stated the City owns land on this parcel and inquired what the City plans to do with that property if this project is approved and built. Senior Planner Lynch noted the City property is a triangle that is not part of this project, but directly adjacent to the project. The applicant proposed to use that parcel as part of their open space; however, it did not meet their goals and timelines. Senior Planner Lynch stated the City does not have any plans for use of the land other than for the City to generally maintain the land.

Councilmember Howe inquired if the units in this project will have individual meters for water, electricity and gas. Councilmember Howe reminded staff that Council recently passed an ordinance that required all condominiums to have individual meters. Senior Planner Lynch stated that individual utilities per unit are required as part of the Vesting Map when the condominiums are created; however, they are not required if the project is a rental project under one management organization.

City Manager Chan added that if Council made individual meters a requirement of a previous ordinance, then the applicant has the option to install them.

Councilmember Swegles inquired whether designating part of the retail to be a pharmacy could be included as part of the recommendations. Planning Officer Ryan stated it could be considered, but the applicant should address that in their presentation. The size of a pharmacy could take up the entire retail space, which may not accomplish the variety of retail activities that the applicant was envisioning for the site. Councilmember Swegles stated the area needs a pharmacy. Planning Officer Ryan stated Council has the authority to add a pharmacy, but it may be the only tenant on the site. The flexibility and long term viability would be limited by allowing only one type of use.

Councilmember Moylan confirmed that the live/work units were revised to be slightly larger after the staff report was written; therefore, the units will meet the minimum per the new Combining District and will not need a deviation from the 10 percent commercial.

Councilmember Moylan stated the Planning Commission recommended removal of condition 2b, however it is still included. Senior Planner Lynch explained that condition 2b was removed for clarity due to an error and was not removed for any project design or intent.

Councilmember Moylan verified that if Council moved to adopt the project, Council would need to modify conditions to pull condition 2b from Alternative 2.

Councilmember Whittum verified with Senior Planner Lynch that if the project were approved, the industrial use across the street would need to conform to 60 decibels (dBA) during the day and 50 dBA at night.

Councilmember Whittum inquired if there are uses across the street that operate 24 hours a day. Senior Planner Lynch confirmed that there is a Federal Express business across the street which operates 24 hours a day and staff is concerned about the noise and lighting from that facility.

Councilmember Whittum verified with Planning Officer Ryan that the City's standard is to attempt to achieve a level of 60 dBA for useable outdoor areas.

Councilmember Whittum noted the EIR is incorrect in stating the California standard is 75 dBA as the threshold for being considered unacceptable. The standard is actually 70 dBA. Councilmember Whittum stated the chart in the City's noise element is also incorrect.

Councilmember Whittum stated the proposed dBA up to 75 dBA on the second floor for exterior noise exceeds the City's acceptable 60 dBA.

Councilmember Whittum inquired what the response from the City would be when residents contact Council about noise at night. Planning Officer Ryan explained that once residential use is adjacent to industrial use, the industrial use is subjected to a more restrictive standard. When a project is approved adjacent to industrial use, staff contacts the industrial user to advise them of compliance and works with the industrial user to bring them into compliance.

Director Hom explained that standard procedure in responding to a complaint involves staff visiting the site and taking noise measurements at the property line in order to verify that a noise violation occurred. At that time, staff would send notification letters to the violator about the need to comply.

Councilmember Howe verified with the Director of Public Works Marvin Rose that the City's master plan does identify serving that area with recycled water.

Public hearing opened at 11:45 p.m.

Aaron Yakligian, applicant, gave a power point presentation on the project history, and showed a video that captured the essence of the Luminaire project. Yakligian stated that Trumark agrees with the Planning Commission in that this land use makes sense. All of the alternatives were analyzed and Trumark moved forward with mixed-use because of the retail need in the area. Yakligian stated that Trumark is aware of the need for a pharmacy in this area and will make every effort to obtain a pharmacy tenant in one of the retail spaces; however, the market will determine who leases the space. Yakligian spoke about the benefits of this project to the area and noted that funding is in place for this project and with Council approval, the project could begin late next year. Yakligian stated Trumark is requesting that Council agree with the Planning Commission's unanimous recommendation to approve this project as proposed in Alternative 3 of the staff report. Yakligian passed out a copy of Trumark's proposed motion approving Alternative No.3 with modified conditions in accordance with Planning Commission's recommendation: Remove condition 2.B. and reinstate the original condition 1.B.2 – "Lot coverage of 51.7 percent where 40 percent is allowed". In addition: Allow at least 75 percent of Live/Work office area to count towards the non-residential use area.

Councilmember Howe asked what Trumark proposed for the City land adjacent to the project and why was that not included in the project scope. Yakligian explained that Trumark submitted a proposal for an expansion of their development onto the adjacent parcel of land. However, based on the difficulty of acquiring City land, Trumark decided to put the public park onsite and removed 10 units. Yakligian stated the City-owned parcel is in less than desirable condition and Trumark would be willing to include the parcel in their landscape maintenance and plan if acceptable to the City. However, Trumark is not interested in acquiring the property. The development is self-contained within their parcel.

Councilmember Howe asked City Attorney Kahn if the City could draft a lease agreement with Trumark for the City parcel to address Yakligian's offer to landscape and maintain the parcel. City Attorney Kahn responded that would be possible assuming both parties negotiate to an agreement. Councilmember Howe questioned if the City might be placed in a liability situation and City Attorney Kahn stated he would need to conduct further review and would respond to Council in the future.

Councilmember Howe verified with Yakligian that the project is designed to have individual meters. Although it is a rental, the bypass will be in place to allow individual meters should the units be converted to condominiums in the future.

Councilmember Swegles stated there is an active retail center not far from the project. Councilmember Swegles spoke in favor of a pharmacy at this project and asked Yakligian about the space needed for a pharmacy. Yakligian explained they will attempt to secure a smaller pharmacy for the space.

Councilmember Swegles verified with Yakligian that the project will be 13,668 square feet of live/work units with 16,000 square feet of retail space. Councilmember Swegles asked what type of businesses would be considered, and Yakligian responded that the marketplace would dictate the type of businesses; however, they are looking for nail salon, deli, bookstore, coffee shop and other neighborhood businesses. Councilmember Swegles explained that he wants to protect other retail businesses in the area and avoid duplication of services. Yakligian explained that Trumark has market consultants who will review the demand for that area. Councilmember Swegles cautioned that competition for the established businesses in these harsh economic times would be a detriment.

Councilmember Swegles stated he will ask that a pharmacy be included in the motion and asked if Yakligian had any concerns. Yakligian stated that may result in the space remaining vacant while they look for such a tenant. Councilmember Swegles explained there are four mobile home communities surrounding that area, many seniors live in the homes and are in need of a pharmacy.

Councilmember Whittum inquired about the noise and light from FedEx across the street and Yakligian agreed that is a valid concern and Trumark will include disclosure language to inform tenants of this issue.

Councilmember Whittum inquired if Trumark plans to convert the project to sale units. Yakligian responded they are doing a condominium map and designing the project to condominium standards should conversion be considered in the future.

Councilmember Whittum noted the video identified the project was within walking distance to two transit stations, yet only one is really feasible since the other is a further distance and requires walking through private property without sidewalks. Yakligian agreed.

Councilmember Whittum verified with Yakligian that one transit pass (Eco Pass) will be issued per unit for a year. Councilmember Whittum inquired about the potential to plumb for recycled water. Yakligian stated they spoke to the City about recycled water and he understood it is not available at that location. Therefore, the building will not be plumbed for recycled water.

Nancy Tivol, Sunnyvale Community Services, stated the board of directors supports higher density affordable housing and fully endorses this development.

Matt Regan, Director of Housing and Sustainable Development Policy of the Bay Area Council, supported this development as a sustainable smart growth development.

Michael Rocha, representative for owners of the FedEx building, expressed concern that this project will impact the surrounding industrial users. Rocha stated the biggest concern is that they will be held to a residential standard for noise, and stated the developer should be responsible for bringing what is essentially a residential project into an industrial area. The burden placed on industry in the area will limit expansion and businesses will leave once their leases expire. Rocha requested that if Council does approve this project, it places the burden for noise mitigation on the developer.

Councilmember Swegles explained the addition of this project may add new customers for FedEx, and there is the potential that employees of the industrial businesses could rent the units. Rocha explained conflict always exists when industrial is placed next to residential - they are not compatible uses. Councilmember Swegles stated he views this project as a plus for the surrounding businesses.

Councilmember Moylan asked Rocha to clarify what he is asking Council to do should the project be approved. Rocha stated they are concerned that noise from their business will travel at night and if the residential standard is imposed on industrial uses, it will be difficult for them to operate. Councilmember Moylan stated the project is built to mitigate noise from Lawrence Expressway, which is closer to the project. Therefore, it seems those mitigation efforts would also address noise from the industrial area which is farther away from the project. Rocha stated that industrial noise is intermittent and could create a more pronounced noise than the constant roar from the freeway. Councilmember Moylan stated Rocha has a valid concern, but stated he is unclear as to what is being asked of Council. Rocha stated the industrial community is asking the City not to require that they adhere to the residential standards for noise.

Councilmember Whittum verified with Senior Planner Lynch that the live/work units face Lawrence Station Road and there will be residents facing the industrial area across a two-lane street. Senior Planner Lynch stated there are also residents who will live above the live/work units who will also face the industrial area.

Bena Chang, Silicon Valley Leadership Group, stated the group is very sensitive to having industrial next to residential conversions and they took a serious look at this project. Chang stated the group came to the conclusion that the benefits of having homes within easy walking distance to light rail outweighed the negative effects of this project. Chang stated the group is confident that Trumark is serious about working together with the neighboring businesses.

Jeanine Stanek, Sunnyvale Historical Society Board of Directors, offered the board's support for this project. Stanek explained the historical society's mission is to promote the history of Sunnyvale, and Trumark developed a history walk and educational brochure that will help the society tell the Sunnyvale story about an area that is underserved.

Garrett Hinds, Director of Architecture for Trumark Companies and certified planner with American Planning Association, explained that the lot coverage is critical to the project as designed. Hinds stated open space is a priority to any neighborhood that Trumark develops, but that open space requirements do not need to be compromised by approving an increase in building coverage. Instead, he stated, what can be compromised is the amount of asphalt in the project. Hinds stated the project was intentionally designed to minimize parking by stacking the parking and aligning it at the same level as the units. Trumark stacked parking so trees could be planted. Hinds explained that the 51.7 percent lot coverage is critical to the project, and noted the increased lot coverage was supported by the Planning Commission.

Councilmember Whittum verified with Hinds that the project does not have any underground parking.

Yakligian explained that the EIR did study noises from the industrial uses in the area and did not find any significant impacts; however, Trumark does want to be a good neighbor and met with property owners. Yakligian stated Trumark worked with the businesses and added disclosure language that met their needs and the needs of the project. Yakligian stated Trumark is continuing to work with the industrial businesses in the area.

Councilmember Whittum stated FedEx is concerned about a low level dBA which is different than significant noise impacts. Councilmember Whittum noted the concern is the ordinance requirement for 50 dBA at the lot line and suggested Trumark characterizes the noise at the lot line now, so if it is above 50 dBA the parties involved can find a way to modify their operation. Yakligian stated they are working with the industrial businesses to develop a solution. Councilmember Whittum asked how long it will take to find a solution and Yakligian stated that at least one more meeting will be needed. Councilmember Whittum inquired if a solution could be reached by December 2, 2008 and Yakligian stated he could not guarantee the timeline.

Public hearing closed at 12:11 a.m.

MOTION: Councilmember Moylan moved, and Councilmember Howe seconded, to approve a modified version of Alternative NO.3:

- **Modified** by strikeouts: Council introduces a resolution to adopt the Statements of Overriding Consideration for air quality impacts ~~associated with the effects of diesel particulate matter on future project residents and~~ related to the project's contribution to cumulative regional air quality impacts;
- Council introduces a resolution to amend the General Plan land use designation from Industrial to Very High Density Residential;
- Council introduces an ordinance to amend Sunnyvale Municipal Code Title 19 to rezone the site from M-S (Industrial & Service) to R-5/MU (High Density Residential and Office/Mixed Use);
- Council approves the Special Development Permit and Vesting Tentative Map with modified findings and conditions,
with the modification to delete condition 2b as per Planning Commission recommendation.

Councilmember Howe clarified that deleting condition 2b will allow for the 51.7 percent lot coverage.

Councilmember Howe offered friendly amendments as follows:

- City staff and the developer shall negotiate in good faith for the city-owned land for landscaping and the city manager shall approve the agreement;

- Require individual electric meters and gas meters, if required, and plumb for individual water meters which will become an operational issue with City as to whether the city manager chooses to have the individual meters installed based on cost effectiveness, and
- Trumark to have a transportation demand management that lasts for one year, to be coordinated by the central office for the coming years to potentially include the light rail, etc. and use the Moffett Park group to assist.

Councilmember Moylan accepted the friendly amendments.

Councilmember Swegles offered a friendly amendment to include a pharmacy as part of the retail space.

Friendly amendment accepted.

Restated MOTION: Councilmember Moylan moved, and Councilmember Howe seconded, to approve a modified version of Alternative 3:

- **Modified** by strikeouts: Council introduces a resolution to adopt the Statements of Overriding Consideration for air quality impacts ~~associated with the effects of diesel particulate matter on future project residents and~~ related to the project's contribution to cumulative regional air quality impacts;
- Council introduces a resolution to amend the General Plan land use designation from Industrial to Very High Density Residential;
- Council introduces an ordinance to amend Sunnyvale Municipal Code Title 19 to rezone the site from M-S (Industrial & Service) to R-5/MU (High Density Residential and Office/Mixed Use);
- Council approves the Special Development Permit and Vesting Tentative Map with modified findings and conditions,
with and the proposed modification is to delete condition 2b as per Planning Commission recommendation
- City staff and the developer shall negotiate in good faith for the city land piece for landscaping and the city manager shall approve the agreement;
- Require individual electric meters and gas meters, if required, and plumb for individual water meters which will become an operational issue with City as to whether the city manager chooses to have the individual meters put in based on cost effectiveness;
- Trumark to have a transportation demand management that lasts for one year, to be coordinated by the central office for the coming years to potentially include the light rail, etc. and use the Moffett Park group to assist, and
- Council requests a pharmacy as part of the retail space.

Councilmember Moylan stated the Overriding Consideration is the housing requirement imposed on the City based on all of the job-creating projects Council has recently approved. This forces the City to be flexible and creative in areas that are near mass transit.

Councilmember Moylan stated the finding for the Special Development Permit, the General Plan will be amended by the action taken for this project, which satisfies finding 2. Councilmember Moylan stated staff provided 14 elements of the General Plan and this project meets half of those elements, which is a classic land use problem. Councilmember Moylan stated this project meets the gateway section of the General Plan and it also has the potential to meet the owner housing element if the units eventually turn into condominiums. Councilmember Moylan concluded that overall this proposal weighs a little heavier on the

General Plan, and he can make all the findings of the Tentative Map as listed on Page 4 of Attachment A. This project is on the edge of an industrial area and there is sufficient evidence that the zoning for the parcel is not working or there would have been demand for this site. Councilmember Moylan stated he can also make finding 1 for the Special Development Permit. Councilmember Moylan stated he is encouraged to hear that all the truck traffic from FedEx operates at the back of the building; however, further discussions will be needed with the surrounding businesses to address their concerns.

Councilmember Whittum stated he opposed the motion because it is obvious that it will impact the surrounding businesses and is not compatible for residential. Councilmember Whittum stated that at the very least this project needs to be placed on hold until the noise levels on the lot line are identified. A plan needs to be in place for the current businesses that allows them to continue operations without having to deal with the noise ordinance for the residential use. Councilmember Whittum stated this project is in a bad location and there are better locations available. Councilmember Whittum commended the developer for their efforts to improve the walkways, make their case, and support light rail. Over time, the industrial area will be lost unless some type of buffer is put in place should this project be approved. Councilmember Whittum stated he would support a motion to continue this project and a final decision to a date certain to allow the applicant time to address the industrial business concerns.

Councilmember Howe asked if Councilmember Moylan missed anything in his motion that would be required since staff did not outline the requirements. Planning Officer Ryan suggested Councilmember Moylan identifies an additional specific condition that allows the deviation of 51.7 percent. Councilmembers Moylan and Howe agreed.

Restated MOTION: Councilmember Moylan moved, and Councilmember Howe seconded, to approve a modified version of Alternative 3:

- **Modified** by strikeouts: Council introduces a resolution to adopt the Statements of Overriding Consideration for air quality impacts ~~associated with the effects of diesel particulate matter on future project residents and~~ related to the project's contribution to cumulative regional air quality impacts;
- Council introduces a resolution to amend the General Plan land use designation from Industrial to Very High Density Residential;
- Council introduces an ordinance to amend Sunnyvale Municipal Code Title 19 to rezone the site from M-S (Industrial & Service) to R-5/MU (High Density Residential and Office/Mixed Use);
- Council approves the Special Development Permit and Vesting Tentative Map with modified findings and conditions;

with and the proposed modification is to delete condition 2b as per Planning Commission recommendation

- City staff and the developer shall negotiate in good faith for the city land piece for landscaping and the city manager shall approve the agreement;
- Require individual electric meters and gas meters, if required, and plumb for individual water meters which will become an operational issue with City as to whether the city manager chooses to have the individual meters put in based on cost effectiveness;
- Trumark to have a transportation demand management that lasts for one year, to be coordinated by the central office for the coming years to potentially include the light rail, etc. and use the Moffett Park group to assist;
- Council requests a pharmacy as part of the retail space, and
- Council approves a condition to approve deviation of 51.7 percent lot coverage.

VOTE: 5-1 (Councilmember Whittum dissented and Vice Mayor Hamilton absent)

COUNCILMEMBER REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE ASSIGNMENTS

Councilmember Swegles stated he will postpone the reports due to the length of the meeting.

Councilmember Moylan stated this item appears on every agenda; therefore, the report can be shared at the next meeting.

NON-AGENDA ITEMS & COMMENTS

COUNCIL: None

STAFF: City Attorney Kahn requested the meeting be adjourned in memory of Lee Rosenthal.

INFORMATION ONLY REPORTS/ITEMS

- Tentative Council Meeting Agenda Calendar
- Draft Minutes for Arts Commission Special Meeting of October 29, 2008
- Draft Minutes for Housing and Human Services Commission Meeting of October 22, 2008
- Summary Minutes for the Intergovernmental Relations (IGR) Study Session Update of October 28, 2008

ADJOURNMENT

In memory of California's leading Redevelopment Lawyer Lee Rosenthal, City Attorney Kahn spoke of Rosenthal's long-time career and contributions to the redevelopment area. City Attorney Kahn called for a moment of silence in his memory.

Mayor Spitaleri closed the Council meeting in honor of Lee Rosenthal and adjourned the meeting to the Redevelopment Agency at 12:31 a.m.

Katherine Bradshaw Chappelle
Interim City Clerk

Date